

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

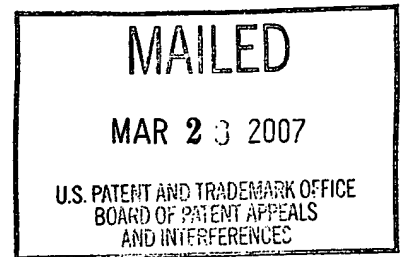
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte Earl J. Braxton

Appeal No. 2007-1421
Application No. 10/034,720

ON BRIEF



Before ADAMS, GRIMES, and LEBOVITZ, Administrative Patent Judges.

ADAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-3, 5, 7, 8, 10, 12, 13, 15, 17 and 21. The only remaining claims 4, 9, 14, and 18-20 were withdrawn from consideration as drawn to non-elected subject matter.

Claims 1-3 are illustrative of the subject matter on appeal and are reproduced below:

1. A portable toilet shelter comprising:
a base; and
a loop enclosure circumscribing said base, said loop enclosure comprising:
opposed planar end walls, each end wall having
longitudinally oriented opposed side edges;

opposed planar side walls between said planar opposed end walls, each of said planar side walls having longitudinally oriented opposed side edges; and

means for movably connecting said longitudinally oriented opposed side edges of said planar side walls to said longitudinally oriented opposed side edges of said end walls such that said opposed planar end walls and said opposed planar side walls complete said loop enclosure;

said portable toilet shelter being in a partially disassembled folded state when said loop enclosure is collapsed, wherein one each of said opposed planar end walls is in direct contact with at least a portion of a respective one of said planar side walls, said loop enclosure being collapsible to a stackable folded planar state having a thickness one each of said planar end walls and one each of said planar side walls for transporting said portable toilet shelter;

said portable toilet shelter being in a partially erected state when said planar end walls are in an unfolded position respectively away from said planar side walls and said loop enclosure is in an upright and self-supporting position, wherein said planar side walls are substantially parallel to one another and said planar end walls are also substantially parallel to one another, such that said planar side walls are substantially transverse to said planar end walls.

2. The portable toilet shelter as claimed in claim 1, wherein said means for movably connecting comprises at least one flexible hinge fastened to respective longitudinally oriented side edges of said planar end and planar side walls.
3. The portable toilet shelter as claimed in claim 2, wherein said at least one flexible hinge is riveted to respective longitudinally oriented side edges of said planar end and planar side walls.

The references relied upon by the examiner are:

Dahl	2,820,256	Jan. 21, 1958
Braxton	4,380,836	Apr. 26, 1983
Tegg et al.	4,744,111	May 17, 1988

GROUND OF REJECTION

Claims 1, 2, 5, 7, 10, 12, 15, 17, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Dahl and Tegg.

Claims 3, 8, and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Dahl, Tegg, and Braxton.

We affirm.

CLAIM GROUPING

Appellant does not separately group or argue the claims. Accordingly, for each ground of rejection, the claims will stand or fall together. Accordingly, we limit our discussion to representative claims 1 and 3. Claims 2, 5, 7, 10, 12, 15, 17, and 21 will stand or fall together with claim 1; and claims 8 and 13 will stand or fall together with claim 3. 37 CFR § 41.37(c)(1)(vii) (July 2005).

Claim Interpretation:

Claim 1 is drawn to a portable toilet shelter. This shelter comprises (1) a base and (2) a loop enclosure (e.g. walls) circumscribing the base. According to claim 1 the loop enclosure comprises

- i. opposed planar end walls which have longitudinally oriented opposed side edges;
- ii. opposed planar side walls which have longitudinally oriented opposed side edges and are located between the end walls; and
- iii. means (e.g. a hinge) for movably connecting said longitudinally oriented opposed side edges of said planar side walls to said longitudinally oriented opposed side edges of said end walls such

that said opposed planar end walls and said opposed planar side walls complete said loop enclosure.

According to claim 1 the shelter is in a partially erected state when the end walls are in an unfolded position respectively away from the side walls and said loop enclosure is in an upright and self-supporting position. Specifically, claim 1 requires that in the partially erected state the planar side walls are substantially parallel to one another and the planar end walls are substantially parallel to one another, such that the planar side walls are substantially transverse to the planar end walls.

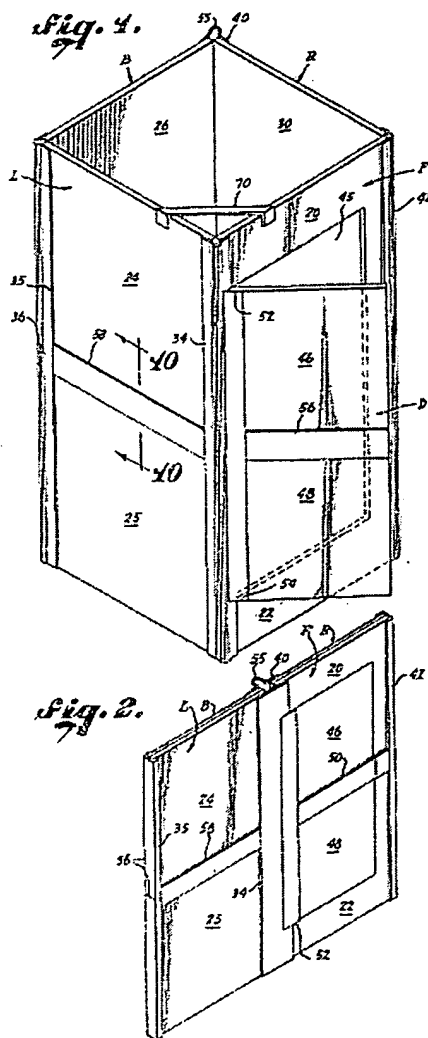
Claim 1 also states that the shelter is in a partially disassembled folded state when the loop enclosure is collapsed. In this collapsed state, one each of the opposed planar end walls is in direct contact with at least a portion of a respective one of the planar side walls. This allows the collapsed loop enclosure to take on a stackable folded planar state having a thickness of one each of the planar end walls and one each of the planar side walls. We recognize that claim 1 asserts that the stackable folded planar state is "for transporting said portable toilet shelter." In our opinion, this language is directed at the intended use of the folded shelter and therefore does not constitute a limitation on the claimed shelter. We additionally note that the claim does not require the shelter to be in a partially dissembled or partially erect state; the claim reads on a loop enclosure in any state.

DISCUSSION

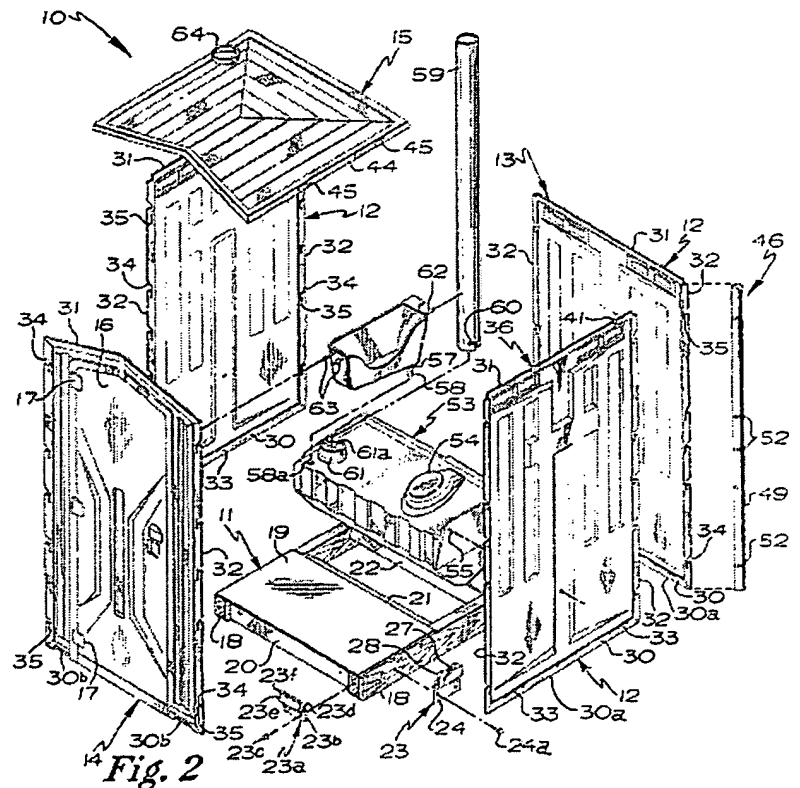
The combination of Dahl and Tegg:

Claims 1, 2, 5, 7, 10, 12, 15, 17, and 21 stand rejected under 35 U.S.C.

§ 103 as being unpatentable over the combination of Dahl and Tegg. To facilitate our discussion, figures 1 and 2 of Dahl and figure 2 of Tegg are reproduced below.



Dahl



Tegg

According to the examiner (Answer, page 3), "Dahl teaches a toilet shelter employing four walls which can be folded to a state best shown in Fig. 2 where

adjacent walls lie superimposed.” More specifically, Dahl teach a portable shelter which may be used as a privy. Dahl, column 1, lines 16-17. In this regard, Dahl teaches a “loop enclosure” that comprises:

- i. opposed planar end walls which have longitudinally oriented opposed side edges;
- ii. opposed planar side walls which have longitudinally oriented opposed side edges and are located between the end walls; and
- iii. means (e.g. a hinge) for movably connecting said longitudinally oriented opposed side edges of said planar side walls to said longitudinally oriented opposed side edges of said end walls such that said opposed planar end walls and said opposed planar side walls complete said loop enclosure.

See e.g., Dahl, column 2, lines 16-66. As can be see in figure 1 of Dahl, when the shelter is unfolded the end walls are in an unfolded position respectively away from the side walls and said loop enclosure is in an upright and self-supporting position. More specifically the planar side walls are substantially parallel to one another and the planar end walls are substantially parallel to one another, such that the planar side walls are substantially transverse to the planar end walls.

Dahl teaches that the shelter can be in a partially disassembled folded state when the loop enclosure is collapsed. In this collapsed state, one each of the opposed planar end walls is in direct contact with at least a portion of a respective one of the planar side walls. See e.g., figure 2. As can be seen in figure 2 this collapsed state allows the collapsed loop enclosure to take on a stackable folded planar state having a thickness of one each of the planar end walls and one each of the planar side walls. We recognize that Dahl also

teaches that the stackable folded planar state illustrated in figure 2 can be further folded into a single stack of eight wall sections (see e.g., figure 4) that "is light enough and of small enough dimension to be carried by a passenger automobile. . . ." Dahl, column 1, lines 28-34.

As the examiner recognizes, however, Dahl does not teach "a base which is circumscribed by the side walls." Answer, page 3. To make up for this deficiency the examiner relies on Tegg. According to the examiner (id.), Tegg teaches "a knock down toilet where base 11 is employed and shown to be circumscribed by the sides of the unit."

Based on this evidence the examiner concludes since both Dahl and Tegg "teach toilet enclosures it would have been [prima facie] obvious to the ordinary artisan [at the time the invention was made] to provide Dahl with a base and roof cooperating with the sides as taught by Tegg. . . ." Id. In the alternative the examiner finds that

it would have been [prima facie] obvious [to a person of ordinary skill in the art at the time the invention was made] to provide for the use of the wall connection scheme of Dahl to replace the scheme of Tegg et al as the two would have constituted obvious alternative assembly/disassembly schemes both shown used in identical art devices.

Id. We find no error in the examiner's prima facie case of obviousness.

The examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir.1992). If that burden is met, the burden of coming forward with evidence or argument is shifted to the applicant. Id. Accordingly, we look to appellant's rebuttal arguments.

According to appellant (Brief, page 7) Dahl's figure 2 illustrates only the first step in collapsing Dahl's loop enclosure. We agree. As a result of Dahl's first step the "loop enclosure" will take on a stackable folded planar state having a thickness of one each of the planar end walls and one each of the planar side walls as does appellant's "loop enclosure". Appellant asserts, however, that Dahl's hinge strip 40 presents a problem because in appellant's opinion this hinge strip will "interfere with a stackable unit and prevent the stacked walls from touching resulting in a greater stackable height thereby causing a smaller number of units to be loaded on a flat bed truck. . . ." Brief, bridging paragraph, pages 7-8. As we understand appellant's argument a "stackable unit" is one collapsed "loop enclosure". As such, we are not persuaded by appellant's argument that a hinge strip will prevent the stacked walls of multiple "loop enclosures" from touching resulting in a greater stackable height for multiple "loop enclosures" and thus a smaller number of "loop enclosures" to be loaded on a flat bed truck. The claim does not require any particular number of "loop enclosures" to be stacked or loaded on a flat bed truck. This argument would also appear to depend on the type of hinge strip utilized. As the examiner explains (Answer, page 4), appellant's "assertion that hinge 40 'presents a serious problem' is pure speculation lacking supporting evidence." Accordingly, we are not persuaded by appellant's assertion.

As appellant correctly points out (Brief, page 8), Dahl explains (column 4, lines 13-38) that the loop enclosure is further collapsed into a stack of eight wall sections. In our opinion this does not detract from Dahl's first step, wherein the

"loop enclosure" takes on a stackable folded planar state having a thickness of one each of the planar end walls and one each of the planar side walls. We recognize, as does appellant, that "Dahl does not teach that the toilet shelter is transportable in this specific state." Reply Brief, page 2. We also recognize that obviousness is determined in terms of the level of skill of a person having ordinary skill in the art at the time the invention was made. 35 U.S.C.

§ 103; Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). We presume that a person having ordinary skill would exercise common sense and sound judgment. In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Accordingly, it is our opinion that a person of ordinary skill in the art would recognize that the loop enclosure could be maintained, stacked, or transported via van or truck in the folded state illustrated in Dahl's figure 2. In addition, we note that appellant's claim 1 refers to a shelter comprising the recited attributes, which does not exclude further collapsing the loop enclosure into a stack of eight wall sections as taught by Dahl. Finally, we note that the claim does not require that it be in the partially-disassembled state; only that it be capable of being folded into a partially-disassembled state.

We are not persuaded by appellant's arguments concerning latch 60, latch arms 62, and pin 64. Brief, page 8. As Dahl explains, two sections of the loop enclosure do not need to be interconnected directly by any hinge means. Column 3, lines 43-45. In this instance, when the wall sections are not directly hinged together, it is desirable to provide suitable latch means for releasably interconnecting the wall sections in such manner as to maintain them in co-

planar alignment. For example, this can be accomplished through use of a latch means 60 that utilizes a pair of latch arms 62 and a pin 64. Column 3, lines 50-62. Thus, the latch to which appellant refers is only applicable when the walls are not connected by hinges, e.g., an alternative embodiment of Dahl's disclosure. While appellant emphasizes his point at pages 2-3 of the Reply Brief, appellant fails to acknowledge that this is an alternative embodiment of Dahl's disclosure as discussed above.

We disagree with appellant's assertion that the objectives of Dahl and Tegg are contrary to each other and therefore there is no motivation to combine their teachings. As discussed above Dahl teaches a collapsible shelter. Tegg teaches a similar shelter with roof and base with the exception that the sides are not collapsible as in Dahl.

In this regard, we find ourselves in agreement with the examiner in that since both Dahl and Tegg "teach toilet enclosures it would have been [prima facie] obvious to the ordinary artisan [at the time the invention was made] to provide Dahl with a base and roof cooperating with the sides as taught by Tegg" Answer, page 3. Alternatively, as the examiner finds

it would have been [prima facie] obvious [to a person of ordinary skill in the art at the time the invention was made] to provide for the use of the wall connection scheme of Dahl to replace the scheme of Tegg et al as the two would have constituted obvious alternative assembly/disassembly schemes both shown used in identical art devices.

Accordingly, we disagree with appellant's assertion that claim 1 sets forth an unobvious structural feature over the combination of Dahl and Tegg. For the foregoing reasons we affirm the rejection of claim 1 under 35 U.S.C.

§ 103 as being unpatentable over the combination of Dahl and Tegg. Claims 2, 5, 7, 10, 12, 15, 17, and 21 fall together with claim 1.

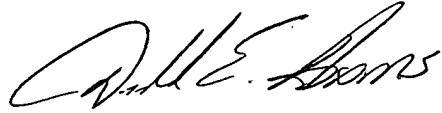
The combination of Dahl, Tegg and Braxton:

Claims 3, 8, and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Dahl, Tegg, and Braxton. We limit our discussion to claim 3. Claim 3 is drawn to a shelter as set forth in claim 1 wherein at least one hinge is riveted to the wall. The examiner relies on the combination of Dahl and Tegg as set forth above. Answer, page 4. The examiner relies on Braxton to teach “the use of rivets to connect hinges to wall panels of portable toilets, the use of which in Dahl would have constituted an obvious expedient known to the ordinary artisan.” Id.

Appellant provides a number of arguments relating to the manner in which the claimed invention is folded. For the reasons set forth above, we are not persuaded. As Braxton teaches (column 3, lines 21-23), the use of rivets to attach hinges to a wall panel, we find no error in the examiner’s rejection. Accordingly, we affirm the rejection of claim 3 under 35 U.S.C. § 103 as being unpatentable over the combination of Dahl, Tegg, and Braxton. Claims 8 and 13 fall together with claim 3.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

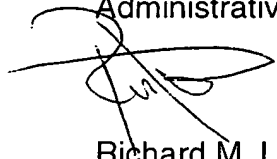
AFFIRMED



Donald E. Adams
Administrative Patent Judge



Eric Grimes
Administrative Patent Judge



Richard M. Lebovitz
Administrative Patent Judge

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